

# Notice of Allowability

Application No.

10/707,674

Examiner

HERBERT J. LILLING

Applicant(s)

WARE ET AL.

Art Unit

1657

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to June 14, 2007 & August 16, 2007.
2. ☒ The allowed claim(s) is/are 1-14 and 16-28.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date August 16, 2007.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
HERBERT J. LILLING  
Primary Examiner  
Art Unit: 1657

**ATTACHMENT TO INTERVIEW OF AUGUST 16, 2007**

Applicant contacted Examiner pertaining to the status of the instant application. Examiner indicated that the amendment filed June 16, 2007 was not sufficient to place the application for allowance based on the following grounds:

i.> The rejection of the claims based on first paragraph of 35 U.S.C. 112 pertaining to the availability of the microorganism strains was still missing from the instant record. Applicant /Attorney still must present a statement pertaining to page 3, [lines 8-6 from bottom] of office action dated September 26, 2006 which recites:

...b) all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent;

which one sentence statement would overcome the above rejection.

ii.> There is a problem with the scope of claims 1 and 16 [withdrawn] as amended since the deposited strains are not all within the scope of the expression " ...Lacidophilus acidophilus microorganisms.." which strains as noted by the three pages of ATCC [attached] indicated that " L7" is " Lacctococcus lactis" ;

" D3" is " Pediococcus acidilactici"

and " L411" is " Lactobacillus acidophilus"

Correction may be taken whereby the above three strains would be added to claims 1 and 16 to support the above three strains.

iii.> Claims 12 and 26 contains strains not within the scope of claim 1 strains. Cancel the strains, which include Bacillus, Bifidobacterium and Streptococcus.

Art Unit: 1657

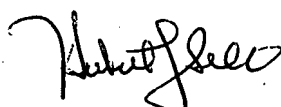
iv.> It was agreed that all of the withdrawn claims including claims 6,7,8 and independent claim 16 plus dependent claims 17-28 will be rejoined which will be searched and examined.

Upon corrective action, the instant application will be considered for allowability of the claimed subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is 571-272-0918 and Fax Number is **571-273-8300**, or SPE Jon Weber whose telephone number is 571-272-0925. Examiner can be reached Monday-Friday from about 7:30 A.M. to about 7:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H.J.Lilling: HJL  
(571) 272-0918  
Art Unit **1657**  
**August 16, 2007**



Dr. Herbert J. Lilling  
Primary Examiner  
Group 1600 Art Unit 1657